Supreme Court, U.S.
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No. 01-0166

In The

Supreme Court of the United States

AFSCME, COUNCIL #15 LOCAL #1159 AFL-CIO,

Petitioner,

v.

BRIDGEPORT GUARDIANS, INC. and
CITY OF BRIDGEPORT,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

BRIEF IN OPPOSITION OF RESPONDENT BRIDGEPORT GUARDIANS

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QUESTION PRESENTED FOR REVIEW

Did the Court of Appeals correctly conclude that the District Court's Order of March 24, 2000 provided appropriate relief in light of the unique facts of this case, notwithstanding the objections of the union that it did not consent to the District Court's order and that the order affected the Union's rights without its consent?

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STATEMENT OF THE CASE

This appeal arises from the Second Circuit's affirmance of an order of the District Court approving changes to one aspect of the disciplinary process used by the Bridgeport Police Department. This change in the disciplinary process took place within the context of the underlying litigation in the case of *The Bridgeport Guardians, Inc. v. Delmonte*, 553 F.Supp. 601 (D.Conn. 1982). In *Guardians v. Delmonte, id.*, the Court found that minority police officers within the Bridgeport Police Department were subjected to all-encompassing racial discrimination in discipline, assignments, and working conditions in violation of Titles VI and VII of the Civil Rights Act of 1964, 42 U.S.C. 2000d and 42 U.S.C. 2000e, *et seq.*, as well as other federal statutes. A significant element of the Court's finding of racial discrimination involved the administration of discipline within the Bridgeport Police Department.

A. *Guardians v. Delmonte:* The 1982 Court Order

In 1982, the District Court, by Judge T. F. Gilroy Daly, issued its initial decision in the case of *Bridgeport Guardians v. Delmonte*, 553 F.Supp. 601 (D.Conn. 1982). The Court found that the Bridgeport Police Department, at its highest levels up to and including the Chief of Police and Police Commission, had fostered racial discrimination by, among other things:

- "Intentionally discriminat(ing) on the basis of race in the number, kind, and severity of disciplinary actions (taken) against black officers in the department." *Id.* at 614.

- Permitting a "racially-charged atmosphere to develop and continue in the B.P.D. They have permitted their supervisory personnel to participate in such racial harassment." This harassment included posting a "Runnin' Nigger Target" on an official departmental bulletin board and the distribution by the Police Chief of a "Minority Sergeants Examination" which contained "demeaningly stupid questions" . . . implying that "blacks could only pass a sergeant's exam that was so idiotic." *Id.*, at 615.
- Retaliating against members of the Guardians who brought complaints of racial discrimination by, for example, assigning an officer who had been hospitalized for high blood pressure to a "particularly high-risk, high-stress assignment." *Id.* at 616.

As a result of its findings of racial discrimination, the Court issued a Remedy Order that was intended to address the ingrained racism within the Bridgeport Police Department. An important element of that Remedy Order was the appointment of a Special Master to review and recommend relief for complaints of racial discrimination in the imposition of discipline and for other forms of racial harassment within the Bridgeport Police Department. Under the Remedy Order and the Federal Rules of Civil Procedure, the Special Master would issue findings and recommended rulings to the Court which would then be subject to the Court's review. Fed. R. Civ. P. 53(e)(2).

Unfortunately, the record reveals that the racism described in *Guardians v. Delmonte, id.*, did not come to an end with the Court's 1982 decision. The level of activity in this case over the seventeen years preceding the

Court's order is reflected in the fact that the docket for this case comprises 1046 entries and over 100 pages of entries. Throughout his tenure, the Special Master has found repeatedly that racial discrimination remains alive within the Bridgeport Police Department. In addition, over the years, the Bridgeport Police Department has frequently been subjected to suit in the Federal Court as a result of racial discrimination in its hiring, promotions, and operations.[1]

B. Decisions of the Special Master

In an October, 1990 recommended ruling, the Special Master observed that, with the filing of a separate federal court lawsuit concerning racial discrimination in promotions, "Racial animosity reached a boiling point . . . A rash of racial epithets and slurs appeared including the notorious and infamous graffiti – 'KKK the answer, try it,' in the men's locker room at Police Headquarters." The Special Master found that a "properly functioning disciplinary process" was essential to ending such racial discrimination.

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[1] See, for example, *Bridgeport Guardians, Inc. v. Bridgeport Civil Service Commission*, 354 F.Supp. 778 (D.Conn. 1973), *aff'd, in part*, 482 F.2d 1333 (2d Cir. 1973); *Members of Bridgeport Housing Authority Police Force v. City of Bridgeport*, 499 F.Supp. 760 (D.Conn. 1980), *aff'd in part and rev'd in part*, 646 F.2d 55 (2d Cir. 1981); *Dobosz v. Delmonte*, 509 F.Supp. 964 (D.Conn. 1981); *Bridgeport Guardians v. Delmonte*, 553 F.Supp. 601 (D.Conn. 1982); *Brown v. Bridgeport Civil Service Commission*, B86-282 (D.Conn. 1986); *Bridgeport Guardians v. City of Bridgeport*, 735 F.Supp. 1126 (D.Conn. 1990), 933 F.2d 1140 (1991), *cert denied*, 502 U.S. 924, 112 S.Ct. 337, 116 L Ed.2d 277 (1991).

Only four months earlier, in July, 1990, the Special Master had threatened to impose upon the Police Commission a fine of $1000 per day and suspension from office because of its failure to promptly and fairly discipline minority and white officers in the same manner. The genesis of this threatened fine and suspension of the Police Commission was the Special Master's 1988 decision on the complaint of Officer William Bailey (hereafter "the *Bailey* case"). In the *Bailey* case, the Special Master ordered that the Board of Police Commissioners "report to the Special Master on the steps taken to ensure that Black police officers, because of their race, are not brought up on disciplinary charges more often and subjected to harsher sanctions than are White officers."

In response to the *Bailey* decision, the Police Commission claimed to have made a "new beginning" by implementing a policy of prompt and evenhanded discipline. However, in his July, 1990 Recommended Ruling, the Special Master found that, rather than a "new beginning," the Board's post-*Bailey* behavior was "a return to business as usual." In addition to failing to promptly discipline errant officers, "the likelihood that minority officers would face discipline before the Board more frequently than similarly situated white officers substantially increased. Minority officers also face significantly quicker imposition of discipline by the Board than do similarly situated white officers."

As a consequence of the Police Commission's discriminatory imposition of discipline, a "backlog" of disciplinary cases had arisen which the Special Master ordered the Commission to eliminate. Equally important, the Special Master ordered the Commission to file regular

reports concerning its imposition of discipline and its processing of disciplinary cases. In a supplemental ruling issued in 1991, the Special Master approved a plan which the City represented to be the "final procedure as its plan to eliminate the backlog" of discipline cases. Under this procedure, cases would be resolved within three months of the date on which charges were brought.

Nevertheless, racial discrimination continued to thrive within the Bridgeport Police Department. A Recommended Ruling issued by the Special Master in 1995 highlighted the depth of the continuing racial discrimination within the Department. In that Ruling on the complaint of Officer David Daniels (who was the President of the Guardians), the Special Master found that Officer Daniels was subjected to a campaign of racial harassment which included jamming his radio transmissions, failure of white officers to provide back-up to him when he was in danger, and the placement of a hangman's noose under the hood of his car while it was parked at a Police Department facility.

In 1997, the Special Master reached a new level of frustration at the Department's inability to police itself. He found that the Department had violated a court order in failing to prevent the assignment of Officer Joe Ann Simmons to the supervision of Sergeant James Halpin. Halpin was a white Bridgeport Police Officer who had earlier pled guilty to criminal charges stemming from having beaten and seriously injuring a Black citizen who was in his custody. Because of racial harassment directed at Officer Simmons by Officer Halpin, the Court had ordered that he be forbidden from supervising her. However, this order was violated on at least six occasions. As

a result of the Department's failure to comply with the Court's order, the Special Master recommended that Department be held in contempt and fined, and that the Police Chief be suspended.

During the course of proceedings, the Special Master found that "Sergeant Halpin did not testify truthfully before me." The Special Master then referred this charge of perjury to the Chief who referred it to the Police Commission for resolution. As noted by the Court in its Memorandum of Decision of May 17, 1999, the Police Commission ignored the findings of perjury by Sergeant Halpin and exonerated him. In that Memorandum of Decision, the Court addressed challenges raised by Sergeant Halpin and other white officers to the role of the Special Master. The Court noted that,

> the Special Master's broad powers under paragraph 10B of the Remedy Order empower him to do all acts and take all measures necessary or proper to "receive, investigate and remedy all complaints of discriminatory treatment or racial harassment . . . and, in appropriate cases, to bring disciplinary charges against those responsible and/or those supervisors who foster or permit such racial harassment to occur in violation of department rules." (Remedy Order, 553 F.Supp. at 619). Within this specification, under Fed.R.Civ.P. 53(c), "the master has and shall exercise the power to regulate all proceedings in every hearing before the master and to do all acts and take all measures necessary or proper for the efficient performance of the master's duties under the order . . . "

Judge Arterton went on to point out that the "traditional use of the Special Master to oversee compliance is a necessary component of the Remedy Order, and thus within the powers conferred by the Remedy Order. *See, United States v. Microsoft*, 147 F.3d 935, 954 (D.C. Cir. 1998)." The Judge further explained the critical role played by the Special Master over the previous seventeen years:

> He has, moreover, provided an immense value to this Court as well as to the parties as a Special Master with a long range historical perspective, who has overseen the enforcement and administration of the Court's Remedy Order since its issuance in 1982, and has come to understand the parties. . . . While the Court is troubled that his services continue to be necessary so many years after issuance of the Remedy Order, the Court concludes that there is no reason that this Special Master should not continue to receive, investigate, and remedy all complaints related to administration and implementation of the Remedy Order.

Significantly, a similar ruling had been issued by Judge T. F. Gilroy Daly nearly *ten years earlier.* At that time, the Bridgeport Police Union (the appellants in this case) challenged a Recommended Ruling by the Special Master and challenged his actions (and, by extension, those of the Court) as *having interfered with the collective bargaining rights of the union under the union contract* – precisely the issue in the current appeal. The Court rejected the union's contention holding, "the Police Union has provided no support for the contention that the contract has any impact upon a duly issued Court

Order." This decision was issued by the Court ***in 1990*** and ***was never appealed by the Union.***

Thus, the union's present appeal appears to have been brought ten years too late. Further, any claim by the union that it was unaware until recently of the role of the Special Master or the Court is simply not true.

C. The Stipulation and the Court's Order

The seventeen-year history of litigation which has been highlighted above serves as the basis for the Stipulation between the City and the Guardians which is the subject of this appeal. The union asserts that there were no findings of discrimination to serve as a basis for the Court's modification of the Remedy Order in accordance with the Stipulation. To the contrary, the record in this case at the time of the Court's modification of its Remedy Order included seventeen years of findings of discrimination. The Stipulation can best be understood in light of the Court's findings of continuing discrimination during the preceding seventeen years.

In 1990, the Police Commission was under the threat of a $1000 per day fine and suspension from office because of its failure to fairly and promptly administer the disciplinary process. In order to monitor the Commission's actions, the Special Master required that the Commission file regular reports concerning its imposition of discipline and concerning its processing of disciplinary cases. In January, 1999, the Special Master found that the Commission had failed to comply with this order during the preceding nine years, that the Commission had been unable or unwilling to resolve the backlog of disciplinary

cases, and that the Commission continued to permit disciplinary cases to remain open and pending for excessive periods of time.

In April, 1999, the Court confronted the parties with the lack of progress in rooting out racial discrimination within the Bridgeport Police Department. The Court urged the parties to undertake efforts to remedy the Police Commission's repeated failures to comply with the Court's orders concerning the fair imposition of discipline, reporting of disciplinary cases to the Special Master, and elimination of the backlog of disciplinary cases. At that hearing, the Court indicated that, unless the parties to this case were able to resolve the underlying causes of the continuing flow of complaints of racial discrimination, the Court would adopt its own remedies to do so. As the Court subsequently noted at the time it approved the Stipulation of the parties, one of the remedies which the Court was seriously considering was the dissolution of the Board of Police Commissioners.

In May, 1999, the Court issued a Memorandum of Decision finding the defendants in contempt for their failure to comply with an earlier order of the Court requiring that the Department protect a minority officer from racial harassment. At the time, the Department was operating under the threat of being held in contempt for violation of various Court orders in *Guardians v. Delmonte, id.*, and the Special Master had recommended the suspension of the Police Chief for failing to take action to ensure enforcement of the Court's orders.

In August, 1999, the Special Master found that the Police Commission had continued to fail to file timely or

complete reports, had failed to resolve disciplinary cases in a timely manner, and that the disciplinary system was "lax and inefficient." On May 2, 2000, the Special Master recommended that the Court consider holding City in contempt or placing the Department in receivership. The Special Master expressed his frustration with the Board's shortcomings, stating, "It is hard to conceive how the Board could think that it could ignore on a regular basis in such a blatant fashion the authority and integrity of the United States District Court. How long will it take for the City of Bridgeport, the Bridgeport Police Department and the Board of Police Commissioners to understand once and for all that they are not above the law?" The Special Master further recommended that the Court "consider appropriate remedies and sanctions such as imposition of fines, damages, appointment of a receiver or other judicial overseer for the Bridgeport Police Department."

At the urging of the Court in April, 1999, the parties had entered into mediation to attempt to resolve their differences. Those mediation sessions resulted in the settlement of certain individual cases which were pending before the Special Master. However, in order to root out racism, it was apparent to all involved (except the police union) that systemic changes within the Bridgeport Police Department were needed. Accordingly, on January 11, 2000, the parties to this litigation entered into a Stipulation that proposed the removal of the Police Commission from disciplinary decisions based on internal complaints of racial discrimination. This was far less harsh relief than the Court's and Special Master's contemplated remedy of entirely disbanding the Police Commission.

All members of the Bridgeport Police Department as well as the Bridgeport Police Union were notified of this Stipulation. The union was given notice of the Stipulation in spite of its refusal to participate in the negotiations which led to the Stipulation. On January 14, 2000, the Police Union moved to intervene in this case for the limited purpose of objecting to the Stipulation. On February 4, 2000, the Court held a hearing at which all parties and intervenors were present and had the opportunity to be heard. On March 24, 2000, the Court issued its decision approving the Stipulation.

In its decision, the Court noted that the Stipulation is intended to provide "uniformity of treatment of all Bridgeport Police officers charged with serious disciplinary offenses." The Court further noted that,

> One important objective of the negotiated change is to eliminate the perception or the reality that any one group is advantaged or disadvantaged by the disciplinary process. This objective is to be accomplished by providing for disciplinary hearings conducted by professional, court-appointed hearing officers, not politically appointed citizen commissioners.

The Stipulation provides extensive due process protections to officers accused of internal rules violations, not the least of which is the resolution of such claims by court-appointed, qualified hearing officers rather than the Police Commission which has, for so many years, mismanaged the Department's disciplinary process. In addition, officers charged with disciplinary offenses are provided with written notice of the charges; all evidence

upon which the charges are based; information concerning the outcome of similar comparison cases in the past five years; the right to union representation and to separate retained counsel; a tape recorded or transcribed hearing at which the officer may challenge the Department's evidence; and an opportunity to challenge any proposed discipline as disparate or unfair. Further, all decisions of the hearing officers must be presented in writing, which will ensure that the basis for each decision is explicit and that there will be uniformity of decisions in similar cases. In order to avoid the possibility that the decisions of Hearing Officers can be undercut by racially and politically motivated "deals" made by the Police Commission or the union, any settlement of a case pending before a Hearing Officer must be approved by that Hearing Officer. Finally, all union rights to appeal disciplinary decisions pursuant to the union contract are preserved.

The Court of Appeals affirmed the Order of the District Court on April 26, 2001.

REASONS FOR DENYING THE WRIT

There are two reasons for denying the writ. First, the Court of Appeals correctly affirmed the District Court's order that was based on overwhelming evidence in the record of this case. Second, the facts of this case are unique to Bridgeport and to the nearly twenty year history of this case and do not raise an issue which warrants review by this Court.

A. The Court of Appeals Correctly Affirmed the District Court's Order

The District Court's approval of the Stipulation between the parties to this litigation is supported by a unique history of racial discrimination within the Bridgeport Police Department. The seventeen-year record of proceedings in this case demonstrates that the Bridgeport Police Commission has simply been unable or unwilling to end racial discrimination within the Bridgeport Police Department, particularly discrimination in discipline.

As the Court of Appeals correctly noted, the change to the Court's Remedy Order which is at issue here, "would probably have been justified as a Remedy in 1983 and was fully justified after the many years of at least partial non-compliance with the requirements of prompt and fair processing of disciplinary complaints by police officers and of timely reports of compliance." *Guardians v. Delmonte*, 248 F.3d 66, 73-74 (2d Cir. 2001).

The District Court's Order approving the Stipulation of the parties to this litigation is more than adequately grounded in the evidence in this case. The facts outlined in this brief comprise only a fraction of the facts upon which the Court's decision was founded. As was true in *United States v. Yonkers Board of Education*, 29 F.3d 40 (2d Cir. 1994); *cert. denied*, 515 U.S. 1157, 115 S.Ct. 2608, 132 L.Ed.2d 853 (1995), the District Court had overwhelming evidence of a "long-standing" pattern of racial discrimination within the Bridgeport Police Department upon which to base its order approving the Stipulation.

Voluntary compliance, such as the Stipulation that is at issue here, is the preferred method of resolving Title VII violations. *Local Number 93, International Association of Firefighters, AFL-CIO, CLC v. City of Cleveland*, 478 U.S. 501, 515, 106 S.Ct. 3063, 92 L.Ed.2d 405 (1986). It is well settled that a remedy which is obtained through a consent decree may exceed the relief which a court may have ordered after trial. *Firefighters v. Cleveland, id.*, at 478 U.S. 525; *Kozlowski v. Coughlin*, 871 F.2d 241, 244 (2d Cir. 1989). In this case, the relief agreed to by the parties was *less* than the remedy contemplated by the Court and the Special Master, both of whom had considered placing the Department in receivership or the complete dissolution of the Police Commission. The Stipulation is obviously justified in light of the evidence amassed during the history of this litigation and in light of the Police Commission's years-long history of non-compliance with Court orders.

The Stipulation and resulting District Court Order are intended to remedy some of the most important, long-standing Constitutional rights violations that are at the heart of this litigation. "Once a Constitutional violation has been established, 'the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.' " *United States v. Yonkers Board of Education, id.*, at 43. In the *Yonkers* case, the Court further stated that, "The scope of our review of an order designed to remedy a *long-standing constitutional violation* is accordingly narrow: The district court, which has first-hand experience with the parties and is best qualified to deal with the flinty, intractable realities of day-to-day implementation of constitutional commands, must be given a great deal of flexibility

and discretion in choosing the remedy best suited to curing the violation." *Id.*, at 43 (internal quotations and citations omitted, emphasis added). *See, also, Dixon v. Shalala*, 54 F.3d 1019, 1034 (2d Cir. 1995); *Sands v. Runyon*, 28 F.3d 1323, 1327 (2d Cir. 1994); *Bridgeport Guardians v. City of Bridgeport*, 933 F.2d 1140, 1148 (2d Cir. 1991), *cert. denied*, 502 U.S. 924, 112 S.Ct. 337, 116 L.Ed.2d 277 (1991).

The union misstates the holding of *Firefighters v. Cleveland, id.*, at 478 U.S. 529, asserting that the union's consent is needed before the Court approves the Stipulation. In fact, the holding in *Firefighters v. Cleveland*, is precisely the opposite: "While an intervenor is entitled to present evidence and have its objections heard at the hearings on whether to approve a consent decree, it does not have the power to block the decree merely by withholding its consent." *Firefighters v. Cleveland, id.*, at 478 U.S. 528, and cases cited therein.

In relying upon *Firefighters v. Cleveland* the union also conveniently overlooks the facts and holdings of that case. In *Firefighters v. Cleveland*, all courts, up to and including the United States Supreme Court, approved the District Court's adoption of a consent decree over the union's objections that the decree and the resulting court order "adversely affects the rights and interests of employees regardless of whether they were actual victims of past racial discrimination." *Id.*, at 514, fn. 2. The facts cited by the Court as significant in *Firefighters v. Cleveland* bear great similarity to those in Bridgeport. Both cities had lost repeated court battles over racial discrimination during a course of many years (eight years in Cleveland; seventeen years in Bridgeport). Both cities had entered

into consent decrees in order to voluntarily address continuing problems of racial discrimination. In both cities, the union had been invited to participate in negotiations (the union accepted the invitation in Cleveland but refused to participate in Bridgeport). Most significantly, in the Cleveland case, the Court approved a much more far-reaching consent decree than is at issue here. For example, the Cleveland decree included race-conscious relief, something which is utterly lacking in the decree at issue here.

It must also be noted that the union's objection to the Court's "interference" with its collective bargaining agreement is raised ten years too late. In 1990, the union challenged the Court's and the Special Master's ability to purportedly interfere with the collective bargaining agreement's provisions concerning the Police Commission's role in discipline. The union made precisely the same challenge in its "Objection to the Special Master's Recommended Ruling Re: Incident of October 10, 1990." There, the union challenged the imposition of discipline upon certain officers as a result of findings of the Special Master, claiming that the Special Master's actions interfered with the collective bargaining agreement. Judge Daly rejected the union's challenge, holding that the union contract did not override Title VII. The union *never challenged that holding nor did it appeal that holding.* Thus, the union's current appeal is untimely under FED.R.APP.PROC. 4(a)(1) which requires that a notice of appeal be filed within 30 days after the entry of the judgment or order from which appeal is taken. The requirements of Rule 4 are jurisdictional and failure to comply with them is fatal to an attempt to appeal a

District Court's ruling. *Torres v. Oakland Scavenger Company*, 487 U.S. 312, 317-18, 108 S.Ct. 2405, 101 L.Ed.2d 285 (1988); *Branum v. Clark*, 927 F.2d 698, 704 (2d Cir. 1991); *Hulsey v. Sargent*, 15 F.3d 115, 118-19 (8th Cir. 1994).

The primary grounds for the union's objection is that the Stipulation impinges upon the union's collective bargaining agreement, entered into under state law. However, state laws must yield to the requirements of Title VII when obedience to state laws results in a violation of Title VII. 42 U.S.C. 2000e-7. "Because state law must yield to federal law in Title VII cases, . . . we need not consider whether the settlement agreement violates state law." *Kirkland v. New York State Department of Correctional Services*, 711 F.2d 1117, 1132, n. 8 (2d Cir. 1983). *See, also Guardians Association of New York City Police Department, Inc. v. Civil Service Commission*, 630 F.2d 79, 105 (2d Cir. 1980).

Rights conferred by Title VII cannot yield to a collective bargaining agreement. "Title VII's strictures are absolute and represent a congressional command that each employee be free from discriminatory practices. Of necessity, the rights conferred can form no part of the collective-bargaining process since waiver of these rights would defeat the paramount purpose behind Title VII." *Alexander v. Gardner-Denver*, 415 U.S. 35, 51, 94 S.Ct. 1011, 39 L.Ed.2d 147 (1974).

The union contends that the collective bargaining agreement does not require the violation of Title VII and, therefore, the Court should not have removed the Police Commission from its disciplinary role under the union contract. Although the Police Commission is not *required*

to violate Title VII, the fact is that the Commission repeatedly does so in the normal course of its business. The union's position would insulate the Police Commission's discriminatory conduct from the Court's review merely because the union contract could be affected by the Court's remedy.

It cannot be seriously argued that the District Court is powerless to approve the removal of the Police Commission from the disciplinary process simply because there is no state law requirement that the Police Commission discriminate. The Court found that discrimination in the disciplinary process occurs precisely because the Commission is the disciplinary authority. The fact that the Commission achieved that authority through the union contract results in an unavoidable conflict: Either the union contract's provisions must be overridden or the goals of Title VII must be thwarted. Given that choice, the Court's decision in favor of Title VII is the correct choice.

The union asserts that its consent is required in order to enable the District Court to enter the order that is at issue here, citing *Alexander v. Gardner-Denver*, *id.* However, the union ignores the fact that in *Alexander v. Gardner-Denver* the Court held only that voluntary Title VII agreements could not be entered, "absent a judicial determination" justifying their need. *Id.* at 771. In the instant case, a seventeen-year history of District Court findings of racial discrimination provided the basis for the Court's order. The Court's order, although based on the Stipulation of the parties, was also based on and justified by that history of findings of racial discrimination.

The union also claims that the Stipulation imposes obligations on the union without the union's consent. This argument has no merit. In fact, the provisions to which the union objects actually provide greater rights to union members. For example, the Stipulation provides that a respondent officer has the right to bring retained counsel and an additional representative to hearings before the Hearing Officer as well as having the right to union representation. The Stipulation imposes no requirement that the union attend the hearing against its will. Rather, it merely preserves the respondent officer's existing rights to union representation and gives the officer the additional right to bring other representatives to the hearing.

The union also objects to a provision of the Stipulation requiring Hearing Officers to consider whether proposed discrimination is discriminatory. This provision does not impose new burdens on the union; rather, it provides union members with greater rights. If a Hearing Officer finds that a respondent officer's conduct requires discipline, the respondent officer will be *permitted* to present evidence that any proposed discipline is discriminatory. This is an improvement over the current process because the new procedure requires a two-part hearing in which the respondent must first be found to have committed a violation and then informed of the *proposed* discipline. At that point, the respondent can challenge the proposed discipline by showing that it is disparate or unfair. This two-step process ensures that the respondent has the maximum opportunity to challenge both the charges and any proposed discipline and to explicitly raise claims of racial discrimination. The union's objection to this process appears to be that it wishes to be able

to wait until "grievance arbitration" to raise all claims of discrimination. Since the union has never appeared before the Special Master in support of a minority officer, it is difficult to comprehend why the union now expresses this concern over raising claims of racial discrimination.

The union also objects to the requirement of the Stipulation that the settlement of a case pending before a Hearing Officer requires the Hearing Officer's approval. The union speculates that this will interfere with settlements. The actual purpose of this provision is to ensure that no "sweetheart" deals are made to undercut the impartiality of the Hearing Officer's decision so that, for example, white officers are not able to negotiate lesser penalties through the intervention of the union than are imposed on minority officers for similar offenses. If the Hearing Officers' decisions are compromised in a manner which favors one group of officers over another, that would destroy the very reason for using impartial Hearing Officers. In light of that purpose and presuming no desire on the part of the union to foster the unfair imposition of discipline on minority officers, it is unclear why the union would object to such a provision in the Stipulation.

The union also claims that the Stipulation is not intended to address discrimination because it does not apply to "citizen complaints." The union is well aware of the reason that "citizen complaints" are not addressed by this Stipulation: Those complaints are the subject of yet another United States District Court order in a different case, *Barros, et al. v. Joseph A. Walsh, et al.*, 5:72 CV 482 (DFM)(RNC). That case, brought in 1972 and alleging

discriminatory treatment of citizens by Bridgeport police officers and an inadequate response by the Police Commission, also remains pending today under the terms of a settlement agreement, the so-called "*Barros* Decree" approved by then District Court Judge Robert C. Zampano. As the union knows (because it is a participant), mediation is currently taking place to determine whether the *Barros* Decree should be modified (the plaintiffs in *Barros* have asked for the appointment of a Special Master, modeled on the Special Master in this case, because of the Police Commission's failure to properly and fairly adjudicate citizen complaints under the *Barros* Decree). Obviously, the parties to *Guardians v. Delmonte, id.* are not free to negotiate changes to the *Barros* Decree which is, after all, the order of another Federal District Court judge. The fact that the *Barros* case remains active today, nearly *thirty years* after the decree in that case was entered, provides further evidence that the Police Commission remains incapable of fairly resolving disciplinary matters.

Lastly, and serving as further evidence of the union's disdain for minority officers is its inaccurate reference to the Guardians as a "rival labor organization." If the union had, at any time in the past twenty years, addressed the issue of racial discrimination, there would have been no need for the Bridgeport Guardians to do so. The union's attempts to characterize the Guardians as its "rival" demonstrates just how little concern the union has for racial equality. The union's position in this case reveals its complete disregard for the facts and for the history of this case and of minority officers in the Bridgeport Police Department. One would search the record in vain for any

involvement by the union on behalf of a minority officer in this case. Why? Because the union has abdicated its representation of minority officers in cases involving racial discrimination and, as its position here makes clear, is openly hostile to claims by minority officers that their civil rights are violated.

Both the Court and the Special Master found that a properly functioning disciplinary process is essential to ending the history of racial discrimination in discipline within the Bridgeport Police Department. The Court of Appeals correctly affirmed the District Court's Order amending the Court's 1983 Remedy Order in a narrowly tailored manner intended to put into place a prompt and impartial disciplinary process. Accordingly, the petition for a Writ of Certiorari should be denied.

B. This Case Involves Facts Unique to Bridgeport Police Department Which Do Not Create a Significant Issue for this Court

The Bridgeport Police Department's history of racial discrimination and litigation related to racial discrimination, as described above, is a disgrace to the City of Bridgeport but does not raise issues of general significance, precisely because it is such a unique situation. Likewise, the 1983 Remedy Order, as amended in response to this unique history, does not raise issues of such significance that would warrant review by this Court.

Further, the claims now advanced by the union – that the Remedy Order as amended impinges upon the union's contract and state law rights – were raised by the

union in 1990, were the subject of a District Court decision in 1990, and were never appealed by the union at that time. To permit the union to raise these issues now would encourage countless other parties across the nation in cases of all types to attempt to revive claims which were long since abandoned in the District Court, even if they had failed to preserve their rights to appeal years earlier. On this basis alone the petition for a Writ of Certiorari should be denied.

Lastly, this case does not involve and is not asserted to involve a conflict between the Circuit courts and does not involve unresolved or unique Constitutional issues.

CONCLUSION

Accordingly, for all the reasons set forth above, the petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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